



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,308	01/30/2004	Richard Wayne Buskens	LUC-450/Buskens 6-1-1-2	6327
32205 7590 02/08/2007 CARMEN B. PATTI & ASSOCIATES, LLC ONE NORTH LASALLE STREET 44TH FLOOR CHICAGO, IL 60602			EXAMINER WANG, RONGFA PHILIP	
			ART UNIT	PAPER NUMBER
			2191	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/768,308	Applicant(s) BUSKENS ET AL.	
	Examiner Philip Wang	Art Unit 2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/22/2005</u> | 6) <input type="checkbox"/> Other: _____ |

Detail Action

1. This office action is in response to the application filed on 1/30/2004.
2. Claims 1-21 are pending.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-15 and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-15 recite the limitation of an apparatus. Such apparatus may comprise a first manager component and a second manager according to claim limitation of claim 1. The first and second manager components can be interpreted as software and software is not considered a statutory subject matter. Current practice of the Office does not automatically consider a claim using the term apparatus as statutory unless the claim explicitly embodies statutory subject matters. Explicitly claiming, for example, memory or processor in the claim body can overcome this rejection.

Art Unit: 2191

Claim 21 recites an article, comprising one or more computer-readable signal-bearing media. Current practice of the Office does not consider signal as a statutory subject matter. According to the Applicant's specification, a computer-readable signal-bearing media can be a modulated carrier signal (p. 10). Further an electrical data storage medium can be interpreted as signal as signal is electrical. Also, page 2, line 16-17, "The article comprised one or more computer-readable signal-bearing media.", further indicate such article is not a statutory subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 13, 14, 20, and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Per claim 13, it recites the limitation of the software and/or hardware entity is connected with the first manager component to employ one or more of the one or more first management operations and to prevent autonomous control of the software and/or hardware entity by the high availability services software. Upon reviewing the Applicant's specification on page 7, for example, it discloses

Art Unit: 2191

"...So, the software and/or hardware entity 102 may exist outside of the high availability domain while still employing one or more functions of the high availability services software. The software and/or hardware entity 102 may allow connection with the management component 106 (e.g., the high availability services software) and allow connection with the management component 104 to prevent autonomous control of the software and/or hardware entity 102 by one of the management components 104 and 106, such as, the high availability services software. For example, the high availability services software is able to peer with the management component 104 to cooperatively manage the software and/or hardware entity 102 not under the exclusive control of the high availability services software"

It appears the disclosure describes what the invention wants to do without providing detailed information describing how the management component can prevent autonomous control of the software and/or hardware entity 102 by one of the management components 104 and 106, such as, the high availability services software. For this reason, the instant claim is considered lacking enablement requirement.

Per claim 14, it recites the limitation of "...in combination with the software and/or hardware entity, wherein the first manager component, the second manager component, and the software and/or hardware entity are responsible for one or more of setup and teardown of telecommunication connections." Upon review the Applicant's disclosure on page 3, it appears the disclosure states what the invention can do without giving any detail regarding how a telecommunication connection can be setup and tear down. So, one skilled in the art at time of invention would not be able to use the invention.

Art Unit: 2191

Per claim 20, similar to claim 13, the disclosure, for example, on page 7 merely states what the invention can do without actually providing any detail and is considered lacking enablement requirement.

Per claim 21, on page 10 of the Applicant's specification, the one or more computer-readable signal-bearing media could include biological, and atomic data storage medium. It is not clear, according to the specification, how a person with ordinary skill in the art at the time of invention could be able to use an electrical, biological, and atomic data storage medium. To overcome this rejection, the Applicant must show what electrical, biological and atomic data storage medium were used in the instant invention. Showing of products used will be sufficient to overcome this rejection.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "the one or more second management operations of the high availability services software" in "employ one or more of the one or more second management operations of the high availability services software". There is insufficient antecedent basis for this limitation in the claim. According to the claim

Art Unit: 2191

language of claim 1, "the one or more second management operations" operates on "the software and/or hardware entity". Not sure how these operations are now part of the high availability services software.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 16, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Baughman (US Patent No. 6,408, 399).

As per claim 1,

- a first manager component that performs one or more first management operations on a software and/or hardware entity; and a second manager component that performs one or more second management operations on the software and/or hardware entity (c4: 45-65, FIG. 3, "...a disk manage 107 and 117 resides on each computer 10 and 11 to manage file manipulation of the shared disks 12 and 13...").

As per claim 16,

Art Unit: 2191

- configuring a software and/or hardware entity for partial control by a first manager component and partial control by a second manager component (c4: 45-65, FIG. 3, "...a disk manage 107 and 117 resides on each computer 10 and 11 to manage file manipulation of the shared disks 12 and 13...")..

As per claim 21,

- one or more computer-readable signal-bearing media; and means in the one or more media for configuring a software and/or hardware entity for partial control by a first manager component and partial control by a second manager component(c4: 45-65, FIG. 3, "...a disk manage 107 and 117 resides on each computer 10 and 11 to manage file manipulation of the shared disks 12 and 13...").

7. Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (USPGPub. No. 2003/0058796).

As per claim 1, Anderson discloses

- a first manager component that performs one or more first management operations on a software and/or hardware entity; and a second manager component that performs one or more second management operations on the software and/or hardware entity ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling

Art Unit: 2191

manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices. See also, FIG. 2).

As per claim 2,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the first manager component and the second manager component are communicatively coupled ([0019], for example, "The signaling manager receives its working instructions from the traffic manage and from the provisioning manager...").

As per claim 3,

the rejection of claim 2 is incorporated;

further Anderson discloses

- the first manager component and the second manager component coordinate the one or more first and second management operations to occur in a proper sequence ([0019], for example, "The signaling manager receives its working instructions from the traffic manage

Art Unit: 2191

and from the provisioning manager..."; [0033], "...decide how to configure the logical networks on top of the physical network resources...").

As per claim 4,

the rejection of claim 1 is incorporated;

further Anderson discloses

- upon detection by the first management component of an event associated with the software and/or hardware entity, the first manager component sends a notification to the second manager component; wherein upon detection by the second management component of an event associated with the software and/or hardware entity, the second manager component sends a notification to the first manager component([0021], shows monitoring of network event,[0018], [0019], show manager components communicating with each other.).

As per claim 5,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or hardware components; wherein the first manager component starts up the software and/or hardware entity and the one or more software and/or hardware components; wherein the first manager component sends a notification to the

Art Unit: 2191

second manager component to indicate that the software and/or hardware entity and the one or more software and/or hardware components have been started ([0020], for example, "provisioning element for non-real time circuits...performs...end point connections and port provisioning..."; [0018]-[0019])).

As per claim 6,

the rejection of claim 5 is incorporated;

further Anderson discloses

- the second manager component initializes one or more of the one or more software and/or hardware components; wherein the second manager component sends a notification to the first manager component to indicate that the one or more of the one or more software and/or hardware components have been initialized ([0020], for example, "provisioning element for non-real time circuits...performs...end point connections and port provisioning..."; [0018]-[0019])).

As per claim 7,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or hardware components; wherein the first and second manager components

Art Unit: 2191

cooperate to initialize, monitor, and detect one or more failures of the software and/or hardware entity and one or more of the one or more software and/or hardware components ([0021]).

As per claim 8,

the rejection of claim 7 is incorporated;

further Anderson discloses

- the first and second manager components cooperate to recover the software and/or hardware entity from the one or more failures ([0068], "...restored quickly in the event hardware failure...").

As per claim 9,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the first manager component sends a request to the second manager component to cause the second manager component to perform a management operation of the one or more second management operations on the software and/or hardware entity ([0019]).

As per claim 10,

the rejection of claim 1 is incorporated;

further Anderson discloses

Art Unit: 2191

- one or more of the first and second manager components comprise high availability services software ([0068], line 2, "...high availability...").

As per claim 11,

the rejection of claim 1 is incorporated;

further Anderson discloses

- in combination with the software and/or hardware entity, wherein the second manager component comprises high availability services software operating in a high availability domain; wherein the software and/or hardware entity operates outside of the high availability domain, wherein the software and/or hardware entity interacts with the high availability domain([0068], line 2, "...high availability...").

As per claim 12,

the rejection of claim 11 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the high availability domain to employ one or more of the one or more second management operations of the high availability services software([0068], line 2, "...high availability...").

Art Unit: 2191

As per claim 13,

the rejection of claim 12 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the first manager component to employ one or more of the one or more first management operations and to prevent autonomous control of the software and/or hardware entity by the high availability services software ([0068], line 2, "...high availability...").

As per claim 14,

the rejection of claim 1 is incorporated;

Anderson discloses

- in combination with the software and/or hardware entity, wherein the first manager component, the second manager component, and the software and/or hardware entity are responsible for one or more of setup and teardown of telecommunication connections ([0060], "...creating...and tearing down connections...").

As per claim 15,

the rejection of claim 1 is incorporated;

further Anderson discloses

Art Unit: 2191

- the software and/or hardware entity comprises one or more first software and/or hardware components and one or more second software and/or hardware components; wherein the first manager component controls the one or more first software and/or hardware components; wherein the second manager component controls the one or more second software and/or hardware components ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices.).

As per claim 16,

Anderson discloses

- configuring a software and/or hardware entity for partial control by a first manager component and partial control by a second manager component([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager;

Art Unit: 2191

and the software and/or hardware entity is the network devices.).

As per claim 17,

the rejection of claim 16 is incorporated;

further Anderson discloses

- allowing the software and/or hardware entity to accept one or more first management operations from the first manager component and one or more second management operations from the second manger component, wherein the first and second manager components cooperate to initialize, monitor, and detect failures of the software and/or hardware entity ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices.", [0021], "...monitoring..."; [0058], "...provisioning..."; The examiner asserts that monitoring detect failures.)

As per claim 18,

the rejection of claim 16 is incorporated;

further Anderson disclose

- wherein the second manager component comprises high availability services software operating in a high availability domain, the method further comprising the steps of: operating the software and/or hardware entity outside of the high

Art Unit: 2191

availability domain; and connecting the software and/or hardware entity with the high availability services software within the high availability domain ([0068], line 2, "...high availability...").

As per claim 19,

the rejection of claim 16 is incorporated;

further Anderson disclose

- sending one or more notifications between the first manager component and the second manager component to indicate occurrence of one or more events associated with the software and/or hardware entity ([0018], [0019]).

As per claim 20,

the rejection of claim 16 is incorporated;

further Anderson disclose

- wherein the software and/or hardware entity comprises one or more first software and/or hardware components, wherein the step of configuring the software and/or hardware entity for partial control by the first manager component and partial control by the second manager component comprises the steps of: connecting the one or more first software and/or hardware components with the first manager component to employ one or more first management operations of the first manager component; and connecting the one or more second software and/or hardware components with the second manager component to employ one or more

Art Unit: 2191

second management operations of the second manager component and to prevent autonomous control of the software and/or hardware entity by the first manager component ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices."; [0068], line 2, "...high availability...").

As per claim 21,

Anderson discloses

- one or more computer-readable signal-bearing media; and means in the one or more media for configuring a software and/or hardware entity for partial control by a first manager component and partial control by a second manager component ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices.).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

It is noted that any citation *[[s]]* to specific, pages, columns, lines, or figures in the prior art references and any interpretation of the references should not be considered to be limiting in any way. A reference is relevant for all it contains and may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art. *[[See, MPEP 2123]]*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Wang whose telephone number is 571-272-5934. The examiner can normally be reached on Mon - Fri 8:00AM - 4:00PM. Any inquiry of general nature or relating to the status of this application should be directed to the TC2100 Group receptionist: 571-272-2100.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 2191

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary H. Heston
Primary Examiner
1.29.2007